

1 BRAD D. BRIAN (State Bar No. 079001)  
2 Brad.Brian@mto.com  
3 RICHARD E. DROOYAN (State Bar No. 065672)  
4 Richard.Drooyan@mto.com  
5 LAURA D. SMOLOWE (State Bar No. 263012)  
6 Laura.Smolowe@mto.com  
7 MUNGER, TOLLES & OLSON LLP  
8 355 South Grand Avenue  
9 Thirty-Fifth Floor  
10 Los Angeles, CA 90071-1560  
11 Telephone: (213) 683-9100  
12 Facsimile: (213) 687-3702

13 Attorneys for Defendants  
14 Robert A. Siravo and Thomas E. Swedberg

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18  
19 NATIONAL CREDIT UNION  
20 ADMINISTRATION BOARD AS  
21 CONSERVATOR FOR WESTERN  
22 CORPORATE FEDERAL CREDIT  
23 UNION,

24 Plaintiff,

25 vs.

26 ROBERT A. SIRAVO, TODD M.  
27 LANE, ROBERT J. BURRELL,  
28 THOMAS E. SWEDBERG,  
TIMOTHY T. SIDLEY, ROBERT H.  
HARVEY, JR., WILLIAM CHENEY,  
GORDON DAMES, JAMES P.  
JORDAN, TIMOTHY KRAMER,  
ROBIN J. LENTZ, JOHN M. MERLO,  
WARREN NAKAMURA, BRIAN  
OSBERG, DAVID RHAMY and  
SHARON UPDIKE,

Defendants.

CASE NO. CV10-01597 GW (MANx)

**DECLARATION OF THOMAS E.  
SWEDBERG IN SUPPORT OF  
MOTION TO DISMISS COUNTS 5  
AND 6 OF THE SECOND  
AMENDED COMPLAINT**

Judge: Honorable George Wu  
Date: June 9, 2010  
Time: 8:30 a.m.

## DECLARATION OF THOMAS E. SWEDBERG

I, Thomas E. Swedberg, declare as follows:

1. I make this declaration of personal, firsthand knowledge, and if called upon and sworn as a witness, I could and would testify competently thereto. I submit this declaration in support of Defendant Swedberg and Defendant Siravo's Motion to Dismiss Counts Five and Six of the Second Amended Complaint.

2. In October 2007, I was Vice President of Strategic Planning and Organizational Development at Western Corporate Federal Credit Union (“WesCorp”).

3. Attached hereto as Exhibit A is a true and correct copy of a PowerPoint Presentation, dated October 29, 2007, that I prepared and which I presented to Robert Siravo and John Merlo on or about October 19-22, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed April 13, 2011 at San Diego, California.

By: THOMAS E. SWEDBERG

# Exhibit A

# WesCorp's SERP

October 29, 2007

# WesCorp's SERP

## Senior Management (Not CEO)

- Developed in 2001 to retain and reward executives by providing non-qualified benefits to supplement qualified (DB) plan benefits
- Benefits paid by WesCorp, recovered through life insurance proceeds
- Primary benefit: Lump-sum SERP payment to generate a certain percentage of replacement income:
  - 70% for SVP, 65% for VP
  - Offset by DB, RSF, SSI payments
- Payment is present value of income stream over 20 years less offsets, plus tax gross-up of 40%

# WesCorp's SERP

5

- Currently 6 Participants remain in SERP
  - Bob Burrell, David Trinder, Jeb Burbott, Dennis Toda, Tom Swedberg, and Tim Sidley
- In 2003 WesCorp implemented a non-qualified short term Deferred Incentive Plan for all other senior staff
  - 7.5% annual deferrals for VPs
  - 15.0% annual deferrals for SVP

# WesCorp's SERP

- **CEO's SERP:**
  - Plan expected to provide income replacement at 48% inclusive of offsets for DB plan benefits, RSF, & SS
  - Plus 40% tax gross-up
  - Disability benefit: 6X
  - Death benefit: 3X

# WesCorp's SERP

## CEO's Plan Requires Modification

- SERP no longer produces 48 percent income replacement due to:
  - Compensation differences - SERP uses base salary, DB plan uses base salary plus bonus
  - DB plan benefits are limited to \$180k per year
- Although CEO's SERP benefit amount has increased with base salary, the SERP formula now produces a shortfall of 28%
- Current SERP lump-sum payment is \$4.863 million
- To achieve 48 percent replacement level, lump-sum payment should be \$6.214 million

***Recommend amendment to SERP definition of compensation to reflect correct pay out amount.***

# WesCorp's SERP

## Additional Item for Consideration

- Tax gross-up is currently 40%
  - Percentage was based on then current thinking
  - New plans from CUNA Mutual and ECS use 67%
  - Higher tax gross-up is more equitable

*Consideration: amend SERP to reflect 67 percent tax gross-up amount.*

# WesCorp's SERP

## Summary of Recommended Changes

<b>Bob Siravo</b>	<b>Base Salary</b>	<b>Lump Sum @ 40% Gross Up</b>	<b>Base plus Bonus</b>	<b>Lump Sum @ 40% Gross Up</b>	<b>Lump Sum @ 67% Gross Up</b>
	<b>\$665,000</b> <b>Current SERP</b>	<b>\$4,863 M</b>	<b>\$811,250</b> <b>Change #1</b>	<b>\$6,213 M</b>	<b>\$7,411 M</b> <b>Change #2</b>

With recommended changes, plan returns \$71.6 million to WesCorp – pays out \$18.4 million for all participants

# WesCorp's SERP

## Questions/Discussion